

DATED THIS THE 25 TH DAY OF May 1998

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DR. S. S. CHAKRAVARTY, DR. S. K. CHAKRAVARTY, DR. RANGAVI TALACHAR

March 14th of 1993

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against the order dtd.21.8.93 passed in HRCCRP No.31.86 on the file of the Prl.Dist .Judge, Tumkur allowing the revision petition by setting aside the order dtd.18.2.86 passed in HRC No.48/84 on the file of the Prl.Munsiff, Tumkur.

This HRRP coming on for hearing this day, the Court made the following Order:

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The respondent to this petition filed an eviction petition against the petitioner in respect of a shop premises situated at Tumkur on the ground that he requires the premises for his own use and occupation inasmuch as earlier he was carrying on business at Gubbi Bus Stand and when the Bus Stand was taken over by Karnataka State Road Transport Corporation, he was dispossessed in the year 1984 from the said place of business. According to him he is well versed in carrying on hotel business and therefore requires the premises for starting a hotel.

2. This petition was resisted by the petitioner/tenant on various grounds more important of them being that he is physically handicapped and has been carrying on business of attending to repairs of two wheelers and if he is dispossessed, he will be put to greater hardship.

3. Learned Munsiff while agreeing with the landlord that he requires the premises reasonably and bonafide on the basis of

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evidence adduced by the parties rejected the petition on the ground that the petitioner suffers greater hardship. Respondents herein aggrieved by the said order, had preferred a Rent Revision before the learned Dist.Judge, Tumkur. It has to be observed that the petitioner/tenant had not challenged the finding of the learned Munsiff that the respondent/landlord requires the premises reasonably and bonafide for his own use and occupation; The learned Dist.Judge after reappraising the evidence has allowed the revision petition and consequently ordered eviction.

4. This order is under challenge by the petitioner/tenant in this revision.

5. Sri.P.N.Nanja Reddy - learned counsel appearing for the petitioner's only contention is that the learned Dist.Judge has erred in not appreciating ^{ie petitioner} ~~as~~ ^{he} being a physically handicapped person will suffer greater hardship as admittedly the landlord is a person of fair economic means; Learned Dist.Judge has held that the wife of the petitioner/tenant is an employee in Hindustan

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Machine Tools getting a salary of Rs.1,000/and that the respondent/landlord admittedly has been dispossessed from the business he was carrying on at Gubbi and is now ^{without} ~~that~~ any means for his livelihood. Learned Dist.Judge has disbelieved the contention of the tenant put forward before him that the landlord is running a Condimental Stores in the name and style of RAGHAVENDRA CONDIMENTAL STORES. He has held that the same is being run under a partnership, the other partner being the landlord's brother. Learned Dist.Judge has relied on a decision of this Court in S.C.CHAVAN vs S.K.PATIL reported in ILR 1979(1),Kar.453 has held that merely because the landlord is welloff than the tenant, that is not a deciding factor in assessing the comparative hardship. These findings of the learned Dist.Judge being based on evidence, cannot be faulted-with, as has been rightly held by the learned Dist.Judge merely because the landlord is economically sound compared to the tenant, that itself cannot be taken into consideration to deny the same on the ground that he would not suffer greater hardship.

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6. In this case it cannot be said that the tenant is a man without any means. Admittedly his wife is an earning member and he has been carrying on business for quite sometime. With some difficulty, he may secure an alternative accommodation. But if eviction order is refused, it would be virtually compelling the landlord to live within his limited means for all times to come.

7. For the reasons stated above, there is no merit in this revision petition. Revision petition is dismissed.

8. At this stage, Sri.Reddy - learned counsel appearing for the tenant submitted that having regard to the fact that Tumkur is an expanding town and it is very difficult to secure alternative accommodation, besides petitioner a handicapped person, may have to undergo lot of difficulties in securing a suitable, alternative accommodation, hence prayed for 2 years time to vacate the premises.

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9. Having regard to the said submission and the difficulty in securing alternative accommodation, 2 years time is granted to the tenant/petitioner to quit and deliver vacant possession to the landlord subject to the following conditions:

(a) that the petitioner shall file an affidavit undertaking to voluntarily vacate the premises. Affidavit shall be filed within 4 weeks from today after serving a copy on the otherside .

(b) that he shall pay the monthly rents regularly as and when it falls due.

(c) that he shall not sublet or sublease the premises.

Petition dismissed.

Sd/-
JUDGE

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